No. 520 Fifteenth District

IN THE SUPREME COURT

SPRING TERM, 1914

M. F. TEETER, Plaintiff

vs.

HORNER MILITARY SCHOOL, Defendant

FROM CABARRUS

BRIEF OF

MAXWELL & KEERANS, AND J. W. HUTCHINSON
Attorneys for Defendant-Appellee

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Brief of Maxwell & Keerans, and J. W. Hutchinson, Attorneys for Defendant-Appellee.

Statement

This is an action brought by the plaintiff to recover of the defendant the sum of $70.00, for money paid defendant for tuition of his son, who was sent to, and **expelled** from the school before the end of the session. Defendant denied his right to recover, filed a counterclaim for $80.56, and alleged that plaintiff was indebted to it in said amount for balance due on tuition, etc., for the half-yearly session of its school (6). The plaintiff sent his son to the school in the early part of September, 1913, without making inquiry as to its terms, rules, and regulations. Within a few days after the boy arrived, the defendant, in accordance with its terms and rules, **sent the plaintiff a bill for its half-yearly session,** amounting to $185.00. The **plaintiff** promptly sent it his check for **$90.00,** to be credited on account. There was no agreement that payment for

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the balance of the bill should be extended or indulged (17). Within about three weeks after the boy arrived at school, he was expelled for unruly conduct and repeated violation of the school rules (7-8-9-12-13-18-19). The plaintiff then brought his action to recover $70.00 as a refund in tuition, or for the pro-rata part of the $90.00 which he had paid on the bill sent him. By its rule, the defendant only **received pupils for the half-yearly session, accepted the boy on such terms, and made provisions and arrangements accordingly** (12). By its terms, tuition, etc., for half-yearly expenses were to **be paid in advance—due on entrance**—and this was enforced as to all pupils (11-14). The rules also provided that, in case a boy was dismissed, there **would be no deduction of the amount paid or due** (10). This boy was **expelled,** after being **warned** by the principal, **for repeated violation of the rules,** in accordance with the usual custom of the school, and in the same manner as any other pupil would have been expelled. **The boy smoked, visited when told not to do so, left his room when required to remain therein and prepare his lessons, threw things in the Assembly Hall, raised disturbances after taps—halloing, disobeyed rules of arrest—civil and military, received more demerits for unruly conduct than any boy in the school, which, at one time, amounted to 200, etc.** He was publicly **reprimanded** by Colonel Horner, the principal, at regular roll-call, and was told that he would be **expelled** if he did not improve his conduct, and allowed his demerits to reach 100. The boy paid no **attention** to the warning, **continued** to violate the rules, and finally the **principal regarded his continued presence in the school as demoralizing to the**

school, and expelled him (12-16-18-19). While the plaintiff says he had not read the catalog of the school when he sent his son thereto, **yet he knew, or had cause** to know, that half-yearly payments were required **in advance.** In January, 1913, he first sent his son to defendant for the Spring session, and shortly thereafter the defendant sent him a bill for the half-yearly session, in advance. The plaintiff paid this bill in three installments—**not by agreement,** but through the mere **indulgence and courtesy** of defendant; again, he sent his son back to defendant in the Fall of 1913, and was also, shortly thereafter, **sent a bill** for the half-yearly expenses of the sesison, to be paid in advance. He promptly sent his check for **$90.00, as a payment on said account. The plaintiff admits** that when he received the bill for the half-yearly expenses and made a payment thereon, **he knew the money would be forfeited on expulsion** (7-8-9-14).

The rules of defendant provided, and which were inserted in its catalog and Cadet regulations—"We do not want vicious or habitually insubordinate boys and if such succeed in entering they will be **dismissed.** Applicants are received with **express understanding** that they will **submit** to our authority in every respect. **A boy whose conduct is hurtful to the scholarship and morals of his associates will be expelled."**

"Any cadet who shall **disobey** a command of the principal or of any professor, instructor, or other superior officer, or behave himself in a refractory or disrespectful manner, shall be **expelled** or otherwise punished" (11-13).

Several thousand of defendant's catalogs were distributed, and defendant **mailed** plaintiff a copy of

same in June—before the Fall of 1913 (12). The plaintiff admits that a copy of same may have come to him in the mail—that he may have looked at it, thought it was an old circular, and destroyed it, but never read it (9).

Plaintiff produced no evidence whatever that the rules and regulations were unreasonable, that the boy did not violate same, that they were not inserted in the catalog and adhered to in the conduct of the school, or that the boy was improperly expelled.

The defendant requested the Court, at the close of all the testimony, to charge the jury, if they believed the evidence, to answer the issues in its favor (20).

His Honor charged the jury, in effect, that it was immaterial whether plaintiff saw or read the catalog of defendant; that, if he sent his boy to the school without informing himself as to the terms and regulations, he was bound by such, and left it to the jury to determine whether defendant, in expelling the boy, was actuated by malice, viciousness, or any other purpose than the enforcement of its rules and good government of its school (23), The jury answered the issues in favor of the plaintiff. Thereupon, the defendant moved to set aside the verdict, the Court did so and made the following order therein (24): "In the above-entitled cause, the jury having rendered a verdict for the plaintiff, as shown by the issues found, and the defendant, through its counsel, Messrs. J. W. Keerans and John W. Hutchinson, having made a motion to set aside the verdict upon the following grounds:

"1. That the Court committed an error in refusing to give to the jury their sixth prayer for instruction, to wit: 'That, if the jury believed the evidence, they should answer the first issue nothing, and the second issue, for the half-annual charges for board, tuition, etc., less the $90.00 paid by the plaintiff, to wit: $80.56.'

"2. That the Court committed an error in its charge in leaving to the jury to determine, whether or not there was malice or viciousness on the part of defendant, and whether it was prompted by some other purpose than the enforcement of the regulations and good government of the school in expelling the boy of the plaintiff.

"The Court being of opinion (a) that, upon the facts, **it erred** in **refusing** to give to the jury defendant's **sixth** prayer for instruction, as above set forth, and (b) that it **also erred,** upon the evidence, in leaving it to the jury to determine, 'whether or not there was malice or viciousness on the part of defendant, and whether it was prompted by some other purpose than the enforcement of the regulations and good government of the school in expelling the boy of the plaintiff'; and (c) there being no **evidence** as to what were the rules and regulations of the defendant, and its motives for expelling the boy of the plaintiff for violation of same, **other than testified to by the defendant's witnesses, and the catalog and cadet regulations of the defendant's school introduced by defendant, the Court is of opinion, upon the undisputed facts,** that said rules and regulations were **reasonable,** and that the defendant was actuated by **no other motive,** in expelling the boy of the plaintiff, than the **enforcement** of the regulations and good government of the school.

"Therefore, as a matter of law, the verdict of the jury is hereby set aside, and a new trial ordered; and the Clerk will enter this order upon the minutes of the Court."

Contentions

The plaintiff contends:

1. That the defendant has no right to charge him tuition for more than the time his boy was actually in the school, before being expelled, and asserts a right to recover back the pro rata part of the $90.00, which had been paid to it on the bill for the half-yearly expenses in advance.

2. That in sending his son to defendant, he was not bound by its terms, rules, and regulations, because he did not see fit to read the catalog or inform himself prior to sending the boy to the school.

The defendant contends:

1. That plaintiff, by **sending** his boy to the school without taking the trouble to **inform** himself as to its terms, rules, and regulations, was **as much bound** by them, in law, as if he had **read,** or expressly **assented** thereto; that when the boy arrived at the school, it **received** him on its usual terms and regulations, and had a **right** to assume that the plaintiff **assented** thereto; that thereby there was an **implied contract** between the parties, that the defendant was to teach and care for the boy on its usual terms and regulations, and that the plaintiff was to abide by same.

2. That in order to bind the plaintiff it is not necessary to show that he read the catalog of the defendant, or expressly assented to its rules and regulations; that in sending his son, without in-

forming himself thereof, he is estopped by his actions to contend that he is not governed by such rules and regulations.

3. That **plaintiff** has produced **no evidence** that his son did not **violate** the rules, was **improperly** expelled, that the rules were **unreasonable,** or that defendant was **actuated** by any other motive in expelling the boy than the enforcement of its rules and good government of the school; that defendant, in **sending** plaintiff its account for the half-yearly charges in advance, **expressly** put the plaintiff **on notice** as to its terms, and plaintiff, by **making** the payment on same, expressly **assented** thereto; that the plaintiff admits, in his evidence, that **he knew** that no part of the money paid for the half-yearly session in advance would be **refunded,** if the boy were **expelled,** and he was **fixed** with knowledge that the boy was **subject** to expulsion if he violated the rules.

Argument

1. **Was the plaintiff bound by the terms and regulations of defendant?**

The plaintiff bases his right for relief **solely** on the ground that he sent his son to the school without reading its rules and regulations, and did not expressly assent thereto.

Such a position is clearly untenable. If plaintiff preferred not to **inform** himself before sending his son to the school, **he was as much bound by its terms and regulations as if he had read them and expressly assented thereto.** Schools cannot be operated without rules and regulations; plaintiff, as a reasonable man, knew this, and he is estopped by his conduct to deny same. The defendant had a

right to expect that the boy was sent to it in conformity with its rules; not only was the plaintiff bound by its terms and regulations by sending the boy to the school without informing himself, **but from his own evidence, he had actual knowledge of same.** His own testimony shows that he first sent his boy to the school in January, 1913, for the Spring session. Shortly after the boy arrived, the defendant sent the plaintiff a bill for payment in advance of the half-yearly expenses. He made one payment thereon, and then paid the balance in two installments. This was not by **agreement, but merely through indulgence or courtesy of defendant.** He was put on **notice,** from this bill, that the half-yearly payment was to be made in advance, and he simply took advantage of defendant's courtesy to pay same in three installments.

He sent his boy back to school in September, 1913, for another half-yearly session, and within a few days after his arrival the defendant again **sent** plaintiff **another bill for payment in advance** of the half-yearly expenses, and he **promptly sent** it his check for $90.00, as a payment on same. **Again, he says he knew that, if the boy were expelled, there would be no refund of any part of the money paid (7-8-9-11-12-14).**

Therefore, from his own testimony, he was fixed with knowledge (a) that the rules of the school required **half-yearly payments** to be made in **advance;** (b) **that if the boy were expelled no part of the money so paid would be refunded;** (c) he knew that the boy must **conform** to the rules, or be **subject** to expulsion; (d) by making payments on the bills sent him for half-yearly expenses in advance,

he thereby **expressly assented** to abide by the terms and regulations of the school.

The rules of the school provide **"no deduction** will be made when a boy withdraws or leaves without permission of the principal, **or is dismissed" (10).**

2. **Has the plaintiff produced any evidence whatever, either from his own testimony or that of defendant, showing that the boy was improperly expelled, or that defendant was actuated by any other motive in dismissing him except the good government and control of the school?**

It is conclusively shown, from the uncontradicted evidence, **that the boy was unruly, continually violated the civil and military rules of the school, would not stay in his room when required to do so, threw things in the assembly hall, did not prepare his lessons, was guilty of breach of arrest, neglect of duty, raised disturbance after taps, high-tempered, and had more demerits entered against him than any pupil in the school, etc.** His conduct was such that he was **publicly reprimanded, and warned** by Colonel Horner that, if he allowed his demerits to go as high as one hundred, he would be expelled. This warning had no **effect upon him,** but he continued his disobedient and unruly conduct until his demerits got to **two hundred,** whereupon he was **expelled** in the same manner as any other boy would have been for like misconduct. Colonel Horner states that he regarded his continued presence as demoralizing to the school.

The entire evidence shows that only as a **last** resort, and for the **good** of the school, was this boy expelled. There is absolutely no evidence that the defendant was **actuated by any other motive** in ex-

pelling him than the proper control and management of the school. His **conduct was demoralizing** to the other boys, and subversive of the school discipline (12-14-15-16-18-19).

The defendant was clearly within its rules in expelling the boy. It had a right to do so, even if said rules had not been inserted in its catalog. It is generally recognized that a school may enforce order and discipline even where it has not formulated rules.

The general rules of defendant on this subject were as follows: "We do not want **vicious or habitually insubordinate boys,** and if such succeed in entering they will be dismissed. Applicants are accepted with the **express** understanding that they will **submit** to our authority in every respect. A boy whose **conduct is hurtful to the scholarship and morals** of his associates will be expelled."

"Any cadet who shall **disobey** a command of the principal, or of any professor, instructor, or other officer, or behave himself in a **refractory** manner, shall be **expelled** or otherwise punished" (11-13).

It makes **no difference** that the catalog does not show the number of demerits sufficient for the expulsion of a pupil. This is a mere matter of keeping track of the violation of school rules. They were not necessary to be inserted in the catalog. The defendant had a right to expel the boy, without regard to the demerit system, simply upon his general conduct, in the interest of the proper government of the school.

3. **Was the Court right in setting aside the verdict, on the grounds set forth in its order?**

We respectfully submit that it unquestionably was.

We have argued, supra, that the plaintiff, in sending his son to the school without informing himself of its rules and regulations, was as much **obligated** to conform thereto as if he had **expressly assented** to same. That his **conduct** showed that he sent his boy to the school to be instructed **according to its rules and regulations,** and the defendant had a **right** to, and **did receive** him on such terms. It has been shown, from plaintiff's evidence, that he had **express** knowledge of, and **expressly assented** to defendant's terms and regulations. On two occasions, he was sent a bill by the defendant for payment of the half-yearly expenses, in advance, and he **thereby knew** that this was a part of the rules and regulations of the school. He **expressly** assented therto by **making payments** thereon. **He testified that he knew that no money, so paid for the half-yearly session in advance, would be refunded if the boy were expelled.** He has produced **no evidence** whatever that the terms or rules were **unreasonable,** that the boy was expelled from any **other** motive than the good government of the school, or that such expulsion was **unreasonable.** Again, **he admits** that a **copy** of the catalog may have come to him through the mail, and he may have destroyed same without reading it, thinking it was some pamphlet. **The defendant mailed him a catalog.** It could not **compel** him to read it. It expressly appears, from all the evidence, that the defendant was within its rights in expelling the boy, and if same had not been done it would have been **derelict** in its duty to the other pupils and the proper government of the school. Such being the uncontradicted evidence, the Court was right in setting aside the verdict on the grounds, "that it should

have instructed the jury that, if they believed the evidence, they should answer the first issue nothing, and the second issue $80.56; and further, that there was no evidence that the defendant expelled the boy from any other motive than the good government and conduct of the school (24).

4. **The law applicable to the case at bar.**

In Horner vs. Westcott, 124 N. C., 518, the plaintiff brought an action against the defendant, after expelling two pupils, to recover for the whole scholastic year, alleging that the terms of his catalog provided that the entire school year should be paid for, even if the pupil were expelled. The evidence developed that one pupil was taken in the school at half price, and the other one for $100.00 per session, and that regular payments were to be made, according to its rules, in sums of $62.50, payable September 1, November 1, January 18, and April 1. The boys were expelled before November 1; the Court held that, inasmuch as one of the boys was to be taken at half price and the other one for $100.00 per session, and as the first payment was to be made on September 1, that the plaintiff could only recover for the amount that **should have been paid** on September 1, and that there was nothing in the rules showing that, in case of expulsion, the parent would be liable for the whole scholastic year.

The Court further said, at page 521: **"This was not paid as it was to be, at the commencement of the session. If it had been paid, it is stipulated that it would not be returned except at the option of the plaintiff. That it was not paid when these boys entered school was owing to indulgence, and not the fault of the plaintiff, and the defendant has no right to complain of this. If this installment had**

been paid, the plaintiff would have had the right to retain it. As it was the defendant's duty to have paid this installment when it was due, and not the plaintiff's fault that it was not paid, it seems that the defendant should not complain if he has to pay now."

It will be observed by the Court that the plaintiff in the case, supra, introduced his catalog to prove that he was entitled to recover for the whole scholastic year, and the point made in the present case, to wit: that the plaintiff, by sending his boy to the school, was bound by its terms and regulations, though he had not read or seen the catalog, was not raised or determined in that case. Therefore, the Horner case does not hold, that the defendant would not be bound by the terms of the school, if he sent his boy to same without informing himself of the rules and regulations. The facts in the instant case are much stronger, and distinguishable from the Horner case; (a) in that, the plaintiff says, in the present case, he sent his boy to the school without informing himself; (b) when he sent his boy to the school in January, 1913, he received a bill for the half-yearly expenses to be paid in advance, made payments on same, and when he sent his boy for the Fall session, in September, 1913, he also received a bill for the half-yearly session in advance, and sent his check for $90.00 as a payment on same; (c) defendant mailed plaintiff a catalog, and the latter admits that same may have come to his house, but if so he destroyed it without reading; (d) he admits that he knew, if the boy were expelled, no money paid would be refunded; (e) he further admits that, for the half-yearly session for the Spring of 1913, he paid in three installments, but this was

by the courtesy of the school, and not by agreement; (f) by receiving two bills for the half-yearly payments in advance, and making payments on same, he thereby knew and assented to the terms of the school, and his admission that he knew, if the boy were expelled, no part of the money would be refunded, shows that he was entirely familiar with the terms and rules of the school, to wit: that payments for the half-yearly session should be made in advance, and, under its rules, his boy was subject to expulsion, if he violated same, and no part of the money paid would be refunded; (g) in the present case, payment for the half-yearly session was to be made in advance, whereas, in the Horner case, they were to be in two payments—in September and November.

The Horner case, supra, holds that the plaintiff was entitled to recover the amounts, according to its rules, which were due and payable on September 1, and again, because the plaintiff indulged the defendant, that this did not waive the terms; also, that as the plaintiff could recover for the amounts to be paid in advance according to its rules, the defendant could not complain if he had not paid same, on account of the indulgence of the plaintiff.

In the case at bar, the plaintiff, when he received the bill, in September, 1913, for the half-yearly payment in advance, knew this was required, and he promptly sent his check for $90.00 as a payment on same.

In the Horner case, supra, the Court held that the plaintiff might recover for the amount that ought to have been paid, and which was not paid, on the entrance of the students. In the case at bar, plaintiff was due defendant $170.56 for the half-

yearly session, in advance. He paid $90.00 on same, and is therefore due $80.56. The total sum being, under the rules, payable in advance, plaintiff is liable, under the above authority, for the balance.

In Horner and Graves vs. Baker, 74 N. C., 65, the plaintiff attempted to introduce in evidence, circulars which were extensively advertised, showing its terms to be payment in advance for the half-yearly session, and also that the plaintiffs were put to expense in preparing for board and tuition of students at each session; the boy was expelled for violation of the rules, and the lower Court only allowed recovery for the actual tuition furnished. On appeal, the Court said (67) "The fact that plaintiffs were conductors of a public school, and had advertised extensively the terms and regulations of their school, taken in connection with the fact that defendant had sent his son to this school for one session, and had also sent him to a second session, was some evidence the defendant had notice of the terms and regulations of the school, and had assented thereto, and the lower Court committed an error in not permitting same to go to the jury."

The Court will observe that, in this case, the point was not directly raised as to whether the parent, in sending his son to a school without informing himself as to its terms, was bound thereby. The facts in the case at bar are much stronger and different from those in the above case, as discussed supra.

In Bingham School, et al., vs. Richardson, 60 N. C., 217, the Court said: "Where the proprietors and managers of a school, on being applied to by parent to receive his sons as scholars, inform of their willingness to receive them, and sent him a statement of their terms, one of which is, when a place

is engaged, the session's charge is considered due, unless the boy be prevented from coming by act of God, and the parent, by letter, expresses his acceptance of the terms, although does not send his sons to the school, he is liable to pay for the session's board and tuition, the proprietors proving their ability and willingness to comply with the contract on their part."

It will be observed that, in this case, the boys were not even **sent** to the school, yet the Court held that the defendant was chargeable for a session in advance.

In the case at bar, the plaintiff did not make a **formal** application, but **actually** sent his son to the school, and he **thereby** was as much bound by the terms of the school as if he had **signed** an instrument stating "I will be bound by your rules."

If, in the Bingham case, the plaintiff could recover when the boys did **not** attend, certainly in the **instant** case, the defendant should recover, when the boy **was sent,** and it was ready and willing to instruct him on its usual terms.

In Manson vs. Culver Military School, 141 Ill. App., 250, the plaintiff sent his boy to the defendant's school. He made a written application for the admission, which was in part as follows: "I desire to enter my son as a cadet in Culver Military Academy for the year commencing September 16, 1903, and ending June, 1904, subject to the conditions of your printed catalog and the regulations of the Academy."

It does not appear in this case whether the plaintiff had **ever actually read or seen** the printed catalog, but it is **evident** he simply applied for admission to the school on one of its **formal** blanks for said

purpose. One of the rules of the school was that, if a pupil were dismissed or suspended, **no money** should be refunded, and that a half-yearly payment be made **in advance.** The plaintiff entered his son at the school on September 18, and he was dismissed on November 17, 1903. The plaintiff, in entering his son at the school, complied with the terms, in paying $250.00 in **advance,** and brought an action to recover the pro-rata part of said sum, on account of his son being expelled before the end of the session.

The Court said, at pages 252-3, "The written application of plaintiff for the admission of his son to the Academy, together with the printed catalog and regulations of the Academy referred to in the application, constitute the contract between the plaintiff and defendant; that contract provides that, in case a cadet is dismissed, **no money will be refunded.** To recover the money paid on a contract, the plaintiff was bound to prove a **breach** of the contract by the defendant, and the question presented on this appeal is, **was the dismissal of Cadet Manson, under the facts and circumstances shown by the evidence, a breach** of the contract between the plaintiff, his father and the defendant? Under the regulations of the Academy, any delinquency of a cadet was reported on the guard sheet, and the list of delinquencies was read daily. The cadets against whom a delinquency was so reported could apply to the commandant of such cadets to have such delinquency removed. The commandant also fixed the number of demerits for each delinquency. Between September 18 and November 16, 1903, Cadet Manson accumulated, according to his admission, 192 unremoved demerits, and according to the contention of defendant, 207."

The case further shows, at page 254, that the cadet, after violating the rules—"The next morning he was called before the commandant of cadets, who told him that he **could not stand** his conduct of the night before, sent him to the Superintendent, and the latter told him that his conduct of the night before was something they could not stand; that he was very sorry he had to let him go. The Superintendent testified that he gave the cadet his dismissal, **because of the accumulation of his demerits and his violation of the rules of the Academy the day before, and during the entire Fall.**"

The Court further said, at page 255, **"It was for the Superintendent to determine what the punishment for such acts and conduct should be; whether it should be dismissal from the Academy, or some lighter punishment. The regulations conferred upon the Superintendent the power to dismiss cadet Manson for such actions, irrespective of the question whether his demerits for the term, up to that time, amounted to a few less or a few more than 200. The only requirement necessary, so far as concerns a review by a court of justice, of his action in dismissing Cadet Manson, is that his action shall be so unreasonable and oppressive as to warrant a conclusion that he acted maliciously, unfairly, or from some improper motive, other than the proper enforcement of the regulations of the Academy, and the maintenance of proper discipline**—citing Koblitz vs. West Rose Univ., 21 Ohio Cir. Ct., 144; Curry vs. La Salle Sem., 168 Mass., 7; Fessman vs. Seeley, 30 S. W., 268; Kabus vs. Seftner, 34 Misc. (N. Y.), 538; Horner School vs. Westcott, 124 N. C., 518."

The Court again said, at page 256, "We think that the evidence fails to show that the action of

the Superintendent in dismissing Cadet Manson was unreasonable or oppressive, or any facts to warrant or support a conclusion that, in ordering such dismissal, the Superintendent acted maliciously, unfairly, or from any improper motive. It follows, from what has been said, that in our opinion the evidence is not sufficient to warrant or support a finding by the jury that the dismissal of plaintiff's son by the defendant was a breach of the contract between plaintiff and defendant, and therefore, is not sufficient to warrant or support a recovery by the plaintiff from the defendant of the money paid by the former to the latter, under the contract; and the judgment will be reversed."

We have quoted at some length from this opinion, as it is similar in many respects to the case at bar. In the Manson case, as stated supra, the plaintiff merely made a written application for the entrance of his son to the school, subject to the conditions of its catalog and regulations, there being no evidence that he had either seen or read such catalog or regulations.

In the case at bar, while plaintiff did not sign a formal application, he sent his boy to the school, received notice of the terms, made payments accordingly, and knew there would be no refund if the boy were expelled.

Again, in the case at bar, as in the Manson case, there was a demerit system, to keep track of the delinquencies of pupils. In this case, the boy violated the rules of the school, and allowed his demerits to accumulate. In the instant case, the undisputed evidence shows that the boy was unruly, repeatedly violated the civil and military rules, threw things in the Assembly Hall, smoked,

and ran up his demerits to about 200; that he was publicly reprimanded by Colonel Horner at a roll call, and warned that if he did not improve his conduct he would be dismissed; that, notwithstanding this, he persisted in violating the rules, and finally his actions were such that the principal regarded his continued presence so demoralizing to the school that he dismissed him.

The Court, in the Manson case, and which we submit is the correct rule, says: "The only requirement necessary, so far as concerns a review by a court of justice of his action in dismissing Cadet Manson is, that his action shall be so unreasonable and oppressive as to warrant a conclusion that he acted maliciously, unfairly, or from some improper motive—some motive other than the proper enforcement of the regulations of the Academy and the maintenance of proper discipline, and that such discipline did not warrant the jury in rendering a verdict for the plaintiff."

In the case at bar, we respectfully submit that there is no evidence that Colonel Horner wrongfully expelled the boy, or did so from any other motive than the good government and protection of his pupils.

The Court, in setting aside the verdict, recognized this position, and says that there was no evidence shown that defendant was actuated by any other motive in expelling the boy than the good government of the school. This was really the only question left open to the jury, as the Court charged them that, if the plaintiff sent his son to the school without informing himself of the rules and regulations thereof, he was bound thereby, even if he had not read or seen the catalog. This charge, we

respectfully submit, as argued supra, was unquestionably correct, and **especially** so in view of the fact **that plaintiff admits a catalog may have come to his house, but did not read same; that he received two bills showing that payment was required in advance; that he made payment on such bills, and knew that, if his boy were expelled, no money would be refunded.**

In Kabus vs. Seftner, 69 N. Y. S., 983, the Court says: "In an action by a student to recover tuition fees for a failure to give plaintiff the necessary instructions to enable him to pass the examination given by the State Board of Regents, it was **error** to allow a **proportionate** recovery for the instruction which plaintiff **did not receive by his being suspended for improper conduct, since the contract was entire and indivisible**; the plaintiff being either entitled to a total recovery or a forfeiture."

The Court further said, at page 984. **"The plaintiff, by entering the defendant's school, subjected himself to their reasonable rules of discipline. The power is vested in the faculties of all schools and colleges to suppress and punish unbecoming conduct.** If the charge against the plaintiff was true, **his actions were certainly subversive of discipline; and beyond this, no instructor could or should be compelled to continue his duties after such insult,** until suitable apology offered."

In Vidor vs. Peacock, 145 S. W., 673 (Tex.), the plaintiff sent the defendant one of its circulars and catalogs, and a blank to sign for entering his son at the school. The defendant **did not sign the blank** for enrollment of his son, **for the reason that he did not wish to be bound by its provisions**; he **brought** his son to the school, and **entered** him without making or seeking to make any arrange-

ment different from the terms in the catalog; and **made the payment in advance,** as required by the rules of the school, which provided that there would be no **refund** of the money except on account of **severe** sickness, and then upon **advice of a San Antonio physician,** where the school was located. The boy got sick, and was not returned, upon the advice of a **physician at another point.** In this case, the Court said: "In an action upon notes given by defendant for the tuition of his son at plaintiff's school, a circular and catalog were admissible in evidence as showing the terms of the contract between the parties, **accepted by giving the notes,** that the contract was for a year's tuition."

"A parent **contracted** to pay **a whole year's** tuition for his son, unless the boy withdrew on account of **severe sickness** on the advice of a **local** physician. Subsequently the boy, while temporarily at his home in another city with a slight illness which did not prevent his attending school, developed a case of trachoma, which, according to physicians of his **home** city who examined him, unfitted him for further attendance at school. No examination was made by any physician of the city where **the school was located.** Held, that the boy's sickness with trachoma was **no defense** in an action upon the contract **for the unpaid part of the entire year's tuition."**

In this case, as the Court will note, a catalog was sent the defendant, and **a blank to sign** for enrolling his son in the school; but **instead** of signing an enrollment blank he **brought** his son to the school, and entered him **without any written agreement,** gave his notes for the amounts to be paid in advance, and the Court held that the **giving** of said

notes was an assent to the rules of the school requiring payments to be made in advance, and also of the terms of the school in reference to sickness.

In the case at bar, the defendant says that a catalog may have come to his house, but he did not read same, did not seek to inform himself of its terms, but sent his son to its school, and when he received, shortly thereafter, a bill for the half-yearly terms in advance, he made a payment on same; and further says that he knew that, if the boy were expelled, no part of the money paid would be refunded. This showed not only knowledge, but acceptance of the terms of the school.

In Fessman vs. Seeley, 30 S. W., 268-9, the Texas Court says: "In an action to recover advanced payments for the tuition of plaintiff's son, who had been expelled from defendant's school, the evidence showed that it was the understanding of the parties that, in case of expulsion of the pupil for misconduct, advanced payments should be liquidated damages, and not recoverable. The rules of the school provided that there would be no reduction in case of withdrawals, and for the forfeiture of all payments in case of expulsion. Held that plaintiff could not recover."

In the case at bar, the defendant admits he knew that when he made payments in advance for the half-yearly session, there would be no refund of the money if the boy were expelled.

In Curry vs. La Salle Sem., 46 N. E., 110-11, the Massachusetts Court says: "Plaintiff sent her daughter to defendant's school, agreeing to be bound by the conditions of the catalog, which provided that scholars should not be absent from school except at regular recesses. Held, that defendant

was not bound to allow plaintiff's daughter to remain in the school, unless with the understanding that she should not be absent during term time without permission of the officers thereof."

In this case, the plaintiff's daughter was **expelled,** and she brought an action to **recover** money which she had advanced for the half-year's board and tuition. The Court held that she could not recover. In this case the plaintiff merely **signed a formal application** for entrance to the school, and agreed to be bound by the terms thereof.

As argued supra, this **formal application** could be no stronger than where a parent, as in the case at bar, **sends his** son to a school, without informing himself or reading the catalog as to the terms of the school.

The conduct of the plaintiff shows that he intended to be bound thereby, and actually had notice of the rules and regulations.

Acceptance of the terms of a school may be as conclusively implied or shown from the **acts** of the party, as by **formal written agreement or application.** The plaintiff, by **sending** his son to the school, showed that he **intended** to be bound by the terms thereof, and the defendant, in **receiving** him, showed that it **accepted** him on such terms. The defendant, in **sending** a bill for the half-yearly advance payment, shows that it **received** the boy on its usual terms, and the plaintiff, **by making payments** on same, showed that he **sent him there on such terms.** Again, when plaintiff says that he **knew, if the boy were expelled, no money** would be refunded, shows conclusively that he **knew** the boy **might be expelled under the regulations of the school.**

In 1 Page on Contracts, Sec. 50, the author says: **"The party accepting an offer may as well signify his assent to an offer by doing acts which clearly and unquestionably show such assent as by express words."**

"The defendant had **undoubted power to adopt and enforce suitable** rules and regulations for the government and management of the school." 25 A. & E. Enc. Law (2 Ed.), 27-8.

"What are reasonable rules is a question of law." Thompson vs. Beaver, 63 Ill., 357; Fertich vs. Michener, 60 Amer. Rep., 718 (Ind.); State vs. Vanderbilt, 9 Am. S. Rps., 822 (Ind.).

In the case at bar, **there is absolutely no evidence** that the rules and the enforcement of same by defendant **were unreasonable. The plaintiff** introduced no testimony whatever on this point, and the defendant's evidence shows conclusively **that not only were the rules reasonable, but the expulsion of the boy was for the good government and protection of the school.**

"There can be no question as to the **right to expel** a pupil when his conduct is such as to interfere with the discipline and proper government of the school." 35 Cyc., 1140-1.

An examination of the cases cited in this authority will show that the defendant was more than within its rights in expelling the plaintiff's son. **It is undisputed that this boy persistently violated the rules and regulations of the school; that he was warned by the principal that he must cease his misconduct or would be expelled; that thereafter he not only did not improve, but continued to violate the rules, until his further presence was regarded demoralizing to the school and other pupils.**

In Burpee vs. Burton, 45 Wis., 156-7, the Court said: "The **teacher** is responsible for the discipline of his school, and for the progress, conduct, and deportment of his pupils. **It is his imperative duty to maintain good order, and to require of his pupils a faithful performance of their duties. If he fails to do so, he is unfit for the position;** if the offender is **incorrigible,** suspension or expulsion is the only adequate remedy. We conclude, therefore, that a teacher has, in a proper case, **the inherent power to suspend or expel a pupil."**

In Hodgkins vs. Rockport, 105 Mass., 475-6; Expulsion, "was sustained for misconduct in whispering and laughing, omission to study, etc."; in School vs. Bradford, 36 S. E., 920 (Ga.), "for failure to write a composition"; in Murphy vs. Maringo School, 30 Ia., 429, "for persistent violation of regulations"; in Donahoe vs. Richards, 61 Am. Dec., 256-62 (Me.), "for refusal to read from a book prescribed by the school committee"; in Gurney vs. Pitkin, 76 Am. Dec., 171 (Vt.), "for refusal to write English composition"; in Vermillion vs. State, 110 N. W., 736 (Ind.), "for persistent disobedience"; and also many other authorities could be cited to the same effect.

Applying these cases to the **conduct** of plaintiff's son, can there be **any question** as to the **right** of defendant to expel the boy for the varied offenses of which he was guilty?

In Crane vs. Hamilton, 42 Mo. App., 24, it was held that, when a pupil is guilty of bad conduct and violation of the rules, he might be expelled, even if there had been **no rule formulated** applicable to his offense, and that such **failure** to provide a rule did not **deprive** the teacher of authority to enforce rules of conduct prescribed by **common sense or decency.**

5. **The plaintiff's position is totally inconsistent with his actions and his knowledge of the rules and regulations of the school:**

(a) It is **undisputed** that defendant **mailed** him a catalog before his son went to the school in the Fall of 1913; (b) he **admits** that a catalog may have come to his house, and may have destroyed same without reading; (c) he had every **opportunity** to acquire knowledge of the rules, but chose to send his son to the school without doing so; (d) in the Spring of 1913, he first sent his boy to the school, and received, shortly thereafter, a bill for the half-yearly session, payable in advance, **and paid same;** (e) in the Fall of 1913, shortly after his boy arrived for the Fall session, he **received** a bill calling for the half-yearly payment in advance; he **paid** $90.00 on same, without **agreement** to defer the balance. He admits he knew that, if the boy **were expelled,** there would be **no refund** of the amount paid; (f) he has produced **no evidence** to show that the terms and rules were **unreasonable,** or that the boy was **improperly** expelled.

From all these facts, can he be heard to say he is not bound by the rules and regulations? When he sent his son to the school without informing himself, is he not as much bound by the terms as if he had formerly assented to same in writing? When bills were sent to him for payment in advance, **he made payments on same without demur,** and when he says he knew that, if the boy were **expelled, no part** of the money paid would be **refunded, has he not assented to, and is he not fixed with knowledge of the rules?**

From the **conduct** of the plaintiff, the defendant had every right to believe and **act** on the assumption that plaintiff **assented** to its terms and regula-

tions, and the plaintiff, **by his conduct,** is estopped to deny this.

"When a person, with actual or constructive knowledge of the facts, induces another by his words or **conduct** to believe that he acquiesces in or ratifies a transaction, or that he will offer no opposition thereto, and that other, in reliance on such belief, alters his position, such person is estopped from repudiating the transaction to the other's prejudice." 16 Cyc., 791-2.

Under the **Horner** case, 124 N. C., supra, it is held that, even if a boy be expelled, defendant is **liable** for the **payment which should have been made in advance,** though the latter may **not** have paid any part thereof. In the present case, by the rules of the school, the plaintiff was due to pay $170.56 in advance. **He paid $90.00** on same, and he not only cannot recover back any part of said sum so paid, but is **liable** to defendant for the balance, which should have been paid upon the entrance of his boy to the school, to wit: $80.56.

Some of the cases hold that the terms of payment provided by the school rules are in the nature of liquidated damages. The plaintiff introduces no evidence to show that the **charges are unreasonable,** or that the boy was **improperly** expelled. Whenever his son **violated** the rules, and had to be expelled, the **plaintiff,** through his son, **violated** the contract between himself and the defendant; and, as has been said in the cases supra, the defendant **may recover** for the half-yearly session, which **ought** to have been paid in advance under its rules.

The **burden** was upon the plaintiff, in this case, and he has not met same with any evidence whatever to sustain his contention.

The **position** contended for by the defendant is an **important** one, as bearing upon the management and control of schools, and we respectfully submit that, upon the evidence in this case—even upon **plaintiff's** own testimony—the Court was unquestionably right in setting aside the verdict, upon the grounds set forth in its order.

We, therefore, ask that the ruling be sustained.

Respectfully submitted

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